

Construction contractors who physically incorporate tangible personal property into real estate owned by exempt organizations or governmental entities that hold tax exempt "E" numbers can purchase such property tax free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d). See 86 Ill. Adm. Code Section 130.2075. (This is a GIL.)

February 19, 2013

Dear:

This letter is in response to your letter dated January 25, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We would like to verify if our customer COMPANY1 could use the end user exemption to be exempt from Illinois sales tax. We billed COMPANY1 but the end user is COMPANY2.

Attached are copies of our invoice and exemption that COMPANY1 had provided to us.

We appreciate your written advise [sic] in this regard.

DEPARTMENT'S RESPONSE:

For liabilities incurred by sellers of floor coverings, please see 86 Ill. Adm. Code 130.2101 entitled "Sellers of Floor Coverings."

Sales to exempt organizations (organizations that qualify as exclusively religious, charitable, or educational) and governmental entities are subject to tax unless the exempt organization or governmental entity has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2007 and 130.2080. Persons or businesses selling tangible personal property to these organizations or governmental entities must be provided with an "E" number for the sales to be tax exempt, unless another exemption can be documented. It is important to note that only sales of tangible personal property invoiced to the organization or governmental entity itself are exempt. Sales made to an individual member or client of an exempt organization or entity are generally subject to tax.

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then that person or business would be acting as a construction contractor. Construction contractors in Illinois are deemed to be the end users of tangible personal property purchased for incorporation into real property and owe Use Tax on those materials. 86 Ill. Adm. Code 130.2075. However, purchases of tangible personal property by a construction contractor for incorporation into the real estate owned by an exempt organization or governmental entity that possesses a valid "E" number at the time of sale may be made free of Illinois Retailers' Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d).

In claiming the exemption from tax, the construction contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with an exempt organization or governmental entity, identifying the organization or entity by name and address and stating on what date the contract was entered into. The construction contractor must also provide the "E" number issued by the Department to the organization or entity for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

You provided us with a copy of a letter from the Department to the charitable organization that contains the charitable organization's "E" number. You also provided us with a copy of the invoice from you to the construction contractor. However, you did not provide us with a copy of a certification from the contractor stating that the purchase is for conversion into real estate under a contract with an exempt organization or governmental entity, identifying the organization or entity by name and address and stating on what date the contract was entered into. Both the "E" number and the certification must be provided to the supplier by the contractor. See Ill. Adm. Code 130.2075(d)(4).

The information that is required to document an exempt transaction has been provided to you in a number of previous General Information Letters. This information is readily available on the Department's website. The Department does not have the resources to informally review every certificate provided to retailers by a purchaser claiming an exemption and determine whether those transactions are exempt from the Retailers' Occupation Tax and Use Tax.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
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